APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HAROLD J. SWIFT,	§	C.A. No. G-93-220
Plaintiff,	§	
v.	§	GALVESTON, TEXAS
	§	SEPTEMBER 2, 1993
TEXAS DEPARTMENT	§	
CRIMINAL JUSTICE,	§	
INSTITUTIONAL	§	
DIVISION, ET AL.,	§	
**********		9:00 A.M.

TRANSCRIPT OF RULE 16 CONFERENCE
BEFORE THE HONORABLE SAMUEL B. KENT

APPEARANCES:

FOR THE PLAINTIFF:
Mr. Robert McKissick
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FOR THE DEFENDANTS:
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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

THE COURT: The next case is G-93-220, Harold Swift versus T.D.C.

Who's here for the plaintiff?

MR. MCKISSICK: Bob McKissick, Your Honor.

THE COURT: Hello, Mr. McKissick.

MR. MCKISSICK: How are you, sir?

THE COURT: It's nice to see you, sir.

MR. MCKISSICK: It's good to see you, Judge.

THE COURT: Are you here for the --

MR. MCKISSICK: For Mr. Spagnoletti.

THE COURT: All right. And who's here for the Defendant?

MS. WERNER: Susan Werner, Your Honor.

THE COURT: Let me ask y'all a stupid question. What is this doing on a regular Rule 16? Is this guy incarcerated, or what's the deal?

MR. MCKISSICK: Yes, sir. The plaintiff is a prisoner with the Texas Department of Corrections and this is essentially a proper medical care suit.

THE COURT: All right. So he survived his Spears hearing and all --

MR. MCKISSICK: Yes. sir.

MS. WERNER: No, Your Honor, he hasn't had a Spears hearing. A Spears hearing is when they're pro se and the judge has an evidentiary hearing.

MR. MCKISSICK: Oh, no. This is a civil action against the state for injuries to the prisoner while being incarcerated by the State of Texas. It's a minimal malpractice case, Judge. They didn't give him proper medical care, and he is in a wheelchair where he wasn't before.

THE COURT: All right. And I assume you're going to assert immunity defenses?

MS. WERNER: Eleventh Amendment as well as qualified.

THE COURT: All right. Well, all I can do today is give you a very tight time frame for discovery relative only to immunity issues and y'all go ahead -- and I'll give you a briefing timetable for that. I'll rule on it. And one side or the other is going to take it up to the Circuit anyway.

Let me ask that -- I'm going to limit discovery to 45 days. I want discovery completed, please, by October the 15th. And this will be limited only to issues having to do with qualified or absolute immunity.

MR. MCKISSICK: Yes, sir.

MS. WERNER: We don't even have qualified as an issue at this point, Your Honor. It's just Eleventh Amendment and sovereign immunity.

THE COURT: All right. Well, y'all get together with that and just -- and what I'm looking for is only that information that's relative to the assertions of immunity defenses.

MR. MCKISSICK: All right, sir.

THE COURT: And let me ask for dispositive motions on immunity issues by -- can you get those done in two weeks after close of discovery?

MS. WERNER: Your Honor, I'll try and do it within the next two weeks and perhaps stall the discovery.

THE COURT: All right. Well, let me do this, I'm going to set a deadline of October the 29th for that briefing. By all means, if you can do it sooner than that, that will be great; but I will indicate dispositive motions by the latest, October 29th. And I want a response by November the 12th or two weeks after submission of motion, whichever is earlier. In other words, if she can get it done in two weeks y'all whip yours out and let's get done with this.

MR. MCKISSICK: Yes, sir.

THE COURT: And then when you file a reply, reply only, no response to the reply will be required nor permitted. And when the reply is filed, please call my case manager and let her know that the motions are ripe for consideration and I will do my best on that just as quickly as we can and get y'all started on your way to the Circuit.

MR. MCKISSICK: All right, sir.

THE COURT: And is there anything else that we can address for the plaintiff today?

MR. MCKISSICK: I don't believe so, Your Honor.

THE COURT: All right. And for the Defendant?

MS. WERNER: No, Your Honor.

THE COURT: All right. Well, thanks. It's nice to have down here. I'm sorry to bring you here for this seemingly short presentation, but that's the best we can do.

MS. WERNER: My apologies for not doing my motion prior to.

THE COURT: Well, all right. Thank you-all very much. It's nice to see you.

MR. MCKISSICK: Thank you, Your Honor.

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause.

/s/_____ 3/17/95

Kathy L. Metzger — Date

Official Court Reporter